

No. 9(1)82-6Lab-7943.— In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s. Haryana Agro Foods & Fruits Processing Plant, Murthal.

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT, HARYANA,
ROHTAK
Reference No. 205 of 1979

between

SHRI SURAJ BHAN, WORKMAN AND THE MANAGEMENT OF M/S HARYANA AGRO FOODS
AND FRUIT PROCESSING PLANT, MURTHAL

Present.— Shri Raghbir Singh, for the workman.
Shri Surinder Kaushal, for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—*vide* his order No. ID/SPT/124-79/49057, dated 21st November, 1979 under section 10(i)(c) of the I.D. Act for adjudication of the dispute existing between Shri Suraj Bhan, workman and the management of M/s. Haryan Agro Foods and Fruit Processing Plant, Murthal. The term of the reference was :-

Whether the termination of services of Shri Suraj Bhan was justified and in order ? If not, to what relief is he entitled ?

On the receipt of the order of reference notices as usual were sent to the parties. The parties put in their appearance, filed their respective pleadings, on the basis of which the only issue 'As per the term of reference' was framed.

The management examined Shri P.C. Aggarwal, General Manager, H.R. Upadhyaya, Production Supervisor and Shri R.K. Gautam, Junior Food Technologist as their witnesses and closed their case. The workman examined Shri Suraj Bhan, son of Shri Bhulla Ram and himself has his witnesses and closed his case. I heard the learned representatives of the parties and decide the issue as under.

Issue :— The workman has alleged in his notice of demand that the workers organised their union and he was elected president of that union. The union pressed the demand for annual leave, casual and sick leaves and for festival holidays. The management terminated his services without assigning any reason or issuing any charge-sheet on account of his trade union activities.

The management has given the background of the case which according to them is the integral part of the written statement the management has stated that the workman misbehaved with his senior officer on number of occasions for which he was issued verbal warnings and on 5th January, 1979 he gave a written apology for his previous misbehaviour and assured of good behaviour in future. Again on 26th February, 1979 a report was received from his supervisor about his misbehaviour and as a token of punishment he was not taken on duty on 27th and 28th February, 1979. Thereafter he was allowed to resume duty. Again the workman along with other employees committed serious misconduct in the month of March, 1979 and as a result thereof he was not taken on duty. As a protest the daily rated workers decided to close the work and lodged a complaint to the Labour Officer, Sonepat on 23rd March, 1979. The Labour Officer, Sonepat summoned the management and the position was explained to the Labour Officer that there was no lock-out and the management had taken action against Shri Suraj Bhan and others and the consequence of which the daily rated workers were not reporting for duty. On the advice of the Labour Officer, Sonepat Shri Suraj Bhan was taken on duty. He again misbehaved on 11th April, 1979 and disobeyed Shri H.R. Upadhyaya his immediate supervisor. Shri Upadhyaya reported the matter and the report was endorsed by Junior Food Technologist on duty and the same was brought to the notice of the General Manager who after considering the previous conduct of the workman and the gravity of the misconduct barred the entry of the workman as per his order dated 12th April, 1979. The management further pleaded that the services of the workman were not terminated on account of trade union activities but on account of the records as given in the background of the case. The management has placed reliance on Ex. MW-1/1 which has been alleged to be the written apology of the workman for his past misbehaviour. The management witness MW-1 has given out in his cross-examination that no charge-sheet was issued to the workman prior to Ex. MW-1/1 written by the workman. He further gave out that no charge-sheet was given to the workman or explanation was called on the basis of the complaint Ex. MW-1/2. He further stated that he conducted the enquiry personally while calling the workman and supervisor. He could not say without checking the record if there were any proceedings brought in writing. He denied as incorrect the suggestion that the record produced by him was false and fabricated. He was not aware about the formation of union in the factory and he also did not know as to who represented the workman on complaint Ex. MW-1/4 before the Labour-cum-Conciliation Officer. MW-1 has stated that the workman committed misconduct in the month of March, 1979. His entry was again banned and on the receipt of the letter from the Labour

Officer photo copy of which was Ex. MW-1/3 and the copy of the complaint Ex. MW-1/4 the workers did not report for duty. Shri Suraj Bhan and others were again taken on duty on the assurance that they would behave properly in future.

MW-2 has deposed that the incident related to 11th April, 1979. The workman was attending to his duty for washing the bottles. He found the workman missing from the place of his duty without his permission. He enquired from him about the same. He gave the reply "Ase hee kam Hoota Hai Hum to ase hee Karagey". He again told the workman that he has to work properly and remain on the place of his duty then he used vulgar words towards him. He submitted his complaint Ex. MW-1/5 to the Junior Food Technologist Shri R.K. Gautam who called him as well as the workmen and enquired into the matter. The workman used vulgar words against him before Shri R.K. Gautam. MW-3 Shri R.K. Gautam deposed that he received complaint against the workman from Shri H.R. Upadhyay which was Ex. MW-1/5. Then after he called the workman and Shri Upadhyay. On his asking the workman used vulgar words against Shri Upadhyay and answered he would do like that. The management has placed three documents on the file which has been exhibited MW-1/1, MW-1/2 and MW-1/5 on the basis of which the management claimed that the termination of the workman was justified. MW-1 has stated that no charge-sheet was issued to the workman when the workman gave Ex. MW-1/1 in writing and only stated further that it was given on the basis of verbal warning. The respondent concern is run by the Government of Haryana and it is un-understandable that the employees were given verbal warnings only and no action is taken by way of written orders. The written apology Ex. MW-1/1 shall be taken to have been written under pressure and only with a view to resume duty on whatever conditions the management was pleased to place on the workman. The complaint Ex. MW-1/2 is vague and in only one sentence the complainant has levelled three charges, his work being not proper, performance has poor and misbehaved on 26th February, 1979. The charges are not specific and even on this complaint the workman was not given duty on 27th and 28th February, 1979. In Ex. MW-1/5 the complainant Shri Upadhyay has stated that the workman disobeyed him and went to maintenance department without his permission and wasted half an hour. When he asked him about his absence from brush he did not answer properly and used some vulgar words. Shri R.K. Gautam made the remarks on the complainant. The statement made by Shri Upadhyay and Shri Gautam who appeared as MW-2 and MW-3 are not consistent with the report made by them on Ex. MW-1/2 has not mentioned in his statement that the workman has gone to maintenance department and wasted half an hour and he has not mentioned in his complaint that the workman gave the reply "Ase hee kam hoota hai hum to ase hee karagey" which he had stated in his examination in chief. Shri R.K. Gautam has mentioned in his report that he and Shri Verma asked the workman to go in production hall when he was standing in maintenance without work i.e. he used some vulgar words to Mr. Upadhyay in his presence. Shri Gautam has not mentioned this fact in his examination in chief when he appeared as MW-3 and has stated that he called the workmen as well as Shri Upadhyay and has not substantiated his remarks that he and Mr. Verma asked the workman to go in production hall and he was standing in maintenance without work. The report of Shri H.R. Upadhyay and the remarks of Shri R.K. Gautam are self contradictory. The workman cannot be expected to be in the maintenance after the report of Shri Upadhyay which has been made after the return of the workman from the maintenance. Shri R.K. Gautam has shown that he and Mr. Verma met him in the maintenance.

The notice Ex. MW-1/3 and the complaint Ex. MW-1/4 and the statement of MW-1 go to prove that the daily rated workers stopped reporting for duty which the management took action against the workman in the month of March, 1979 for which complaint was made to the Labour Officer, Sonipat and on whose meditation the workman alongwith others was taken on duty. MW-1 has shown his ignorance about the formation of the union but the contention of formation of the union was supported by another witness appearing for the workman and the fact that the workman was the leader of the union has been established beyond doubt, though there may be a small number of workmen employed with the management who were the members of that union. From the report Ex. MW-1/5 and the other reports which formed the basis of the termination of the workman are not worthy of placing any reliance in view of dissection of the evidence above and therefore, the termination of the services of the workman cannot be held to be justified. No chargesheet or explanation was called from the workman and as such no opportunity of hearing was provided. The termination is therefore, not in order and the same is against the principle of natural justice. The workman is therefore, entitled to reinstatement with continuity of service and with full back wages. No order is to cost. The reference is answered and returned accordingly.

Dated the 26th July, 1982.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak

Endorsement No. 1867, dated 20th July, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh has required under section 15 of the I.D. Act.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.